

## **Important Dates in National Water Quality Law**

### **1899 – Refuse Act**

Actually section 13 in the “Rivers and Harbors Appropriations Act”. Prohibits discharge of “...refuse matter of any kind or description...” “...into navigable waters of the United States...” without the permission of the Chief of Engineers and Secretary of the Army. Covers construction of all bridges, piers, jetties, etc.

### **1938 – Rivers and Harbors Act**

Broadens responsibility of Chief of Engineers and Secretary of the Army to give “due regard” to wildlife conservation in permitting construction projects.

### **1948 – Federal Water Pollution Control Act (FWPCA).**

- First broad statement of a Federal interest in promoting clean water.
- Surgeon General given enforcement on pollutant discharge causing “endangerment of public health and welfare”, in interstate waters only.
- Provided for Federal research into causes and treatment of pollution.
- Established federal support of state programs, 30% cost share for design and planning of publicly owned treatment works or POTWs.

### **1956 – 2<sup>nd</sup> FWPCA.**

- Amended to tie Federal funding of state programs to Surgeon General approved state plans for control of water pollution.
- First appropriations for POTW construction grants, 30% cost share.
- Tightened enforcement by limiting time for dischargers to respond to Surgeon General’s notification of endangerment.
- Also authorized and funded staff of engineers, biologists, chemists to aid Surgeon General in investigation of interstate pollution problems.

### **1960 – Supreme Court rules that Refuse Act applies to industrial discharge of wastewater (US v. Republic Steel Corporation).**

### **1961 – 3<sup>rd</sup> FWPCA**

- Increased federal cost share for POTWS to 55%.
- Targeted half of funding to small communities (pop. <125,000).
- Authorized Federal legal action against polluters, with written consent of Governor.

### **1965 – Water Quality Act**

- Creates Federal Water Pollution Control Administration, (a.k.a. the other FWPCA).
- Concept of water quality standards (WQS) first appears in Federal law (though many states were already there).
- Required States to develop within 1 year WQS with specific criteria, for interstate waters only, in order to qualify for grants

- WQS added to endangerment of public health as cause for enforcement.
- Still multiple levels of notification of violation, no penalty provisions little enforcement.
- Enforcement hampered by need to show specific discharges are contributing to water quality problem using complicated, easily challenged, waste load analysis.

#### 1966 – Clean Water Restoration Act

- Yet more Federal funds for municipal wastewater treatment.
  - Funding tied to States having a comprehensive pollution control plan for each watershed.
- Second Supreme Court ruling that Refuse Act applies to industrial wastewater (US v. Standard Oil Company). Still no industrial discharge permits, but dischargers are getting very nervous.
  - FWPCA attempts to require in guidelines a uniform standard of secondary treatment for all municipal wastewater.

1969 – Cuyahoga River catches fire, not once but twice! Lake Erie generally acknowledged as dead. Public awareness of pollution becomes intense and frustration with enforcement of WQS is mounting in many circles.

#### 1970 – Water Quality Improvement Act

- Legislators question FWPCA authority to require treatment standards.
  - FWPCA abolished to pave way for EPA.
- National Environmental Policy Act passed.
  - April 22<sup>nd</sup> marks first Earth Day!
  - October Presidential Order consolidates several Federal agencies with environmental responsibilities, to create the EPA. Operation of EPA begins on December 2<sup>nd</sup>, taking over the functions of the former FWPCA.
  - December 23, another Order by President Nixon creates the Refuse Act Permit Program (RAPP) within the Army Corp of Engineers. Provides for no WQ enforcement against those that file for a permit.

1971- National concern for environmental quality comes to a head with Nixon stretching the provisions of 1899 Refuse Act into a national pollution discharge permits program of sorts. Congress views administration effort as over-stepping their bounds and is spurred to act.

1972 – Major amendments to FWPCA passed in override of Nixon veto.

- Complete rewrite of earlier water quality laws.
- Major battle between House and Senate over approach of effluent limits versus water quality standards. States and dischargers generally side with House and its WQS approach as being more flexible. Environmentalists generally side with Senate, viewing WQS as a failed experiment and required treatment standards for all dischargers as more stringent, but some argue WQS can be more stringent if required to be met when effluent limitations are inadequate (i.e. TMDLs). Compromise ends up with both.
- Establishes development of technology based effluent limits. For conventional pollutants these are based on secondary treatment for POTWs (BCT). Existing industrial direct discharges must meet control levels of best practical technology (BPT) by 1977 and best available technology (BAT) by 1983, for direct discharges. Industrial discharge into POTWs must also meet additional pretreatment requirements, and new sources must meet BAT based new source performance standards immediately.
- Water quality standards for all waters of the nation; includes section 303(d) dealing with total maximum daily loads (TMDLs).
- National Pollutant Discharge Elimination System (NPDES) program created. Makes it illegal to discharge without a permit. Effluent limits are directly enforceable with provisions for inspection, reporting and penalties for non-compliance. All administered by EPA, with delegation to states if certain requirements are met.
- Set national goals of zero discharge by 1985 and fishable and swimmable by 1983. Congress establishes and funds National Commission on Water Quality to study and report back on cost and attainability of these goals.
- Restructures construction grant program toward stronger federal control but more generous funding, establishes new deadlines, and calls for pretreatment standards and industrial cost recovery. Cost share up to 75%.
- Recognizes states as primarily responsible for WQ programs, but subject to EPA approval.

1975 – Natural Resources Defense Council and Environmental Defense Fund sue EPA over slow progress in development of effluent limitations for toxics, a sign of things to come.

1976 – NRDC lawsuit ends with toxics consent decree. EPA directed to address list of 129 “priority pollutants” by developing water quality standards, upgrading BAT requirements, pretreatment standards, and new source performance standards.

15 revisions since 1972, three major ones in 1977, 1981, & 1987.

1977 – 1972 Act becomes Clean Water Act (by parenthetical reference in sec 519) -

- Responds to 1976 consent decree for development of toxics standards
- Acts on recommendations of National Commission on Water Quality study of 1983 goals (BAT & zero discharge).
- Extends BPT compliance deadlines for POTWs whose compliance was hampered by access to funding.
- Also extends BAT compliance deadline to 1984 for all industrial dischargers if they

- had made a “good faith effort” to comply so far
- Added toxics to BAT compliance deadline.
- Directed EPA to set up three categories of pollutants - conventional, non-conventional, and toxic.

1981 – Amendments to CWA, changes to streamline and focus construction grants.

1987 – Amendments to CWA, passed in override of Regan’s second veto.

- Added sections 316 and 319 and new national goal to address nonpoint source pollution.
- Ended construction grants, and set up state Water Pollution Control Accounts (so called State Revolving Loan Funds) in their place.
- Called for storm water discharge permits.
- Added section 303(d)(4), which for the first time specifically mentions in the Act an anti-degradation policy, for waters where standards are attained

1992 – No comprehensive reauthorization since expiration in 1992. CWA just kept alive with continuing resolutions.

1990s – Series of lawsuits sweep the nation faulting EPA for slow implementation of section 303(d) of the Clean Water Act (which calls for identification of water not meeting WQS and development of TMDLs to restore compliance). Many states end up with TMDL development schedules, to address all impaired waters in 7-10 years.

1997 – 25th Anniversary of CWA, much celebration of success.

2000 – BEACH Act passed, provides for monitoring and notification programs focused on coastal waters and protection of “swimmers” from disease-causing organisms.

2002 – 30<sup>th</sup> Anniversary of CWA passes with little fanfare.

#### SOURCES:

Water Environment Federation. 1997. The Clean Water Act – 25<sup>th</sup> Anniversary Edition. WEF. Alexandria, VA. 423 pages.

ASWIPCA. 2004. Clean Water Act Thirty-Year Retrospective – History and Documents Related to the Federal Statute. ASWIPCA. Washington, DC. 785 pages.

# Important Dates in National Water Quality Law

- 1899 - Refuse Act**, administered by the Army Chief of Engineers
- 1948 - Federal Water Pollution Control Act (FWPCA)** – first recognition of Federal interest in clean water, construction grants born
- 1965 - Water Quality Act** – First water quality standards, establishes FWPC Administration, Surgeon General can enforce but it is difficult
- 1966 - US v. Standard Oil Company** – second Supreme Court ruling that Refuse Act applies to discharge of industrial wastewater
- 1969 - Cuhoyga River** catches fire, twice
- 1970 - EPA and Refuse Act Permit Program** established by separate Presidential Orders

# Important Dates in National Water Quality Law

- 1972 - Major Amendments to FWPCA aka the Clean Water Act** – passed over Nixon veto, shift to stronger federal control, melds new concept of technology based controls with old concept of water quality standards
- 1975 - NRDC & EDF sue EPA over slow progress on effluent limits for toxics**
- 1977 - More amendments, law recognized as the Clean Water Act** – deadlines set in 1972 extended, more emphasis on toxics
- 1981 - Amendments to CWA** – major changes to streamline and focus construction grants.
- 1987 - Amendments to CWA passed over Reagan Veto** – Construction grants replaced with State Revolving Loan Funds, nonpoint source and stormwater permit programs born, shift back toward more state control

# **Major Provisions of 1972 Clean Water Act**

**Complete rewrite, major battle between House and Senate over water quality standards vs. effluent limitations approach**

**Established development of technology based effluent limits**

**Water quality standards for all waters of the nation**

**NPDES program for all discharges, provisions for enforcement and penalties**

**Set national goals of:**

**Zero Discharge by 1985, and  
Fishable and Swimmable by 1983**

**Restructured construction grant program toward strong federal control**

**Recognized states as primarily responsible for WQ programs, but subject to EPA approval**